

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ZYNGA GAME NETWORK, INC., a)	Case No. 09-1557
Delaware Corporation,)	
)	ORDER TO SHOW CAUSE
Plaintiff,)	WHY KYLE MCEACHERN
)	SHOULD NOT BE HELD IN
v.)	<u>CONTEMPT</u>
)	
KYLE MCEACHERN, an individual, and)	
DOES 1 through X,)	
)	
Defendants.)	

On April 24, 2009, the Court granted a preliminary injunction against Kyle McEachern ("McEachern"). Docket No. 20 ("Preliminary Injunction Order"). On May 1, 2009, Zynga Game Network, Inc. ("Zynga") filed a Motion Requesting Order to Show Cause Why Kyle McEachern Should Not Be Held in Contempt. Docket No. 42 ("Motion").

Title 18 U.S.C. § 401 states, "[a] court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority . . . as . . . [d]isobedience or resistance to its lawful writ, process, order, rule, decree, or command." 18 U.S.C. § 401. Failure to obey the terms of a preliminary injunction constitutes a contempt of court. Int'l Union v. Bagwell, 512 U.S. 821, 828 (1994); Chiquita Fresh, N.A., L.L.C. v. Pandol Assocs. Mktg., Inc., No. 07-1305, 2008 WL 324009, at *1 (E.D. Cal. Feb. 5, 2008).

1 A plaintiff seeking a defendant's compliance with the
2 provisions of an injunctive order may seek a further order
3 requiring the defendant to show cause why the defendant should not
4 be held in contempt and sanctioned for noncompliance. In re Grand
5 Jury Proceedings, 142 F.3d 1416, 1424 (11th Cir. 1998). To obtain
6 the further order, the plaintiff must: (1) cite provisions of the
7 injunction to be enforced, (2) allege that the defendant has not
8 complied with such provisions, and (3) ask the court, on the basis
9 of plaintiff's representation, to order the defendant to show
10 cause why the defendant should not be adjudged in contempt and
11 sanctioned. Id.; Chiquita Fresh, 2008 WL 324009 at *1.

12 Zynga alleges that Mr. McEachern is not in compliance with
13 the Preliminary Injunction Order because (1) he has failed to
14 provide Zynga's counsel with copies of the complete source code of
15 Mob Underworld; (2) he has failed to disclose to Zynga any
16 passwords or keys that he knows could be used to access any Zynga
17 network or server; (3) he has failed to provide full access to all
18 computers, servers, and storage media in his possession, custody
19 or control so that mirror images of the hard drives can be
20 created. See Mot. at 7-9. Under these circumstances, an order to
21 show cause why Mr. McEachern should not be held in contempt of the
22 Preliminary Injunction Order is proper.

23 For the reasons discussed above, the Court ORDERS:

24 1. The motion for an order to show cause why Mr. McEachern
25 should not be held in contempt of this Court's Preliminary
26 Injunction Order is GRANTED;

27 2. Mr. McEachern must show cause in writing no later than
28

Monday, May 18, 2009, why an order of civil contempt should not be issued against him;

3. Zynga must file and serve a response no later than Friday, May 22, 2009;

4. The Court will hold a show cause hearing on Friday, May 29, 2009, at 10:00 a.m. in Courtroom 1, on the 17th floor, U.S. Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102.

IT IS SO ORDERED.

Dated: May 5, 2009



UNITED STATES DISTRICT JUDGE